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SUBJECT: UPDATE ON LABOR EXPORT IN VIETNAM

Reftel: Hanoi 336

1. (SBU) Summary: According to Vietnamese Ministry of Labor, Invalids, and Social Affairs (MOLISA) officials and Vietnamese press reports, increasing labor exports from Vietnam have created new demands for services and protections for overseas workers. While not yet complete, the process of turning intention into action in the area of labor export reform is underway. MOLISA is pushing for a new, separate law exclusively on labor export to codify and validate existing practice, and to coalesce the current collection of decrees and circulars implementing the 2002 labor code covering the issue of labor export, and the agency-specific directives governing interagency cooperation and responsibilities. GVN efforts to punish labor export regulation violators and protect workers in trouble have had well-publicized success. End Summary.

Growing numbers of export laborers

2. (SBU) Labor migration from Vietnam is rapidly increasing, with around 400,000 workers currently overseas. According to MOLISA, approximately 75,000 workers went abroad in 2003 compared with 21,000 in 1999. While in the first ten months of 2004 only 55,600 workers were exported, indicating a possible drop off in numbers this year, MOLISA anticipates the number of overseas workers to double by 2010. Vietnam's expansion of labor export, both to release unemployment pressure at home and to generate inflows of foreign exchange, has heightened concerns for protecting labor migrants from abuses. The growing number of Vietnamese laborers going overseas, their vulnerability due to poor knowledge and awareness of their labor rights, and reports in the Vietnamese press have encouraged the protection and education of migrant workers prior to their departure and have motivated the GVN to create support mechanisms for them in receiving countries.

Legal reform and oversight

3. (SBU) In order to address the challenges created by the increase in labor exports, Vietnam included updated legislation on overseas workers in its 2002 amendments to the Labor Code. These documents attempt to rectify some of the weaknesses in the labor export system by clarifying the rights and obligations of Vietnamese workers, enterprises, and government agencies involved in this arena, and providing a mechanism for MOLISA to revoke licenses of labor export companies (including state-owned enterprises) that violate worker rights. These amendments were followed in 2003 by Decree 81, which provided detailed implementing regulations (Reftel).

4. (SBU) Since the reforms of 2002 and 2003, the GVN has continued to demonstrate its commitment to ensuring the rights and welfare of temporary overseas workers, and to increase its efforts to monitor and enforce those protections and safeguards. In the past year there have been a number of instances where the GVN has worked to improve conditions for export workers or to protect them from fraud or other mistreatment. According to the Department of Overseas Labor (DOLAB) of MOLISA, in 2003, a Middle Eastern shipping company approached four export labor companies in Vietnam for laborers to work on tourist ocean liners. Preliminary investigation by MOLISA discovered signs of fraud, so the GVN delayed the sending of workers and intervened to stop the contract signing with shipping company. Through the International Maritime Association, MOLISA confirmed other instances of fraud by this shipping company. The GVN has also worked directly with governments of receiving countries to improve the rights and conditions of laborers overseas. In March 2004, the GVN signed an MOU with the Labor Ministry of the Republic of Korea (ROK) to include Vietnam in ROK's Overseas Labor Licensing Law. Representatives from the Vietnamese Embassy in ROK said that after the law took effect in August 2004, laborers from Vietnam would then hold equivalent salaries, interests and obligations as Korean employees. This status includes the right to minimum wage, accident insurance and the right to join labor unions. In a current case involving allegations

of Vietnamese workers being mistreated in Malaysia after being charged with illegal immigration, the Prime Minister instructed the Ministry of Foreign Affairs (MFA) in coordination with MOLISA to work with the Malaysian government to protect the legitimate rights of the workers, according to press reports and MOLISA sources.

15. (SBU) We have identified other concrete examples of the GVN's recent efforts at oversight of the export labor system, to protect workers abroad and to ensure workers rights are respected after returning home. One case involving a Taiwan shipping company is currently pending. In the fall of 2004, Vietnamese workers on the Taiwan ship asked for protection at the Vietnam Embassy in Libya upon docking in Libya, complaining of poor working conditions on their ship. The GVN, through its representatives in Taiwan, are currently working with the Taiwan authorities to make the Taiwanese ship owners terminate the workers' contracts, pay full salaries and pay for the safe return of the workers to Vietnam. In another case in May 2004, Vietnamese workers who had been sent to work in the construction sector in Malaysia were not given jobs or paid their contracted salaries as a result of shocks in the Malaysian economy. According to the labor law, export labor companies are supposed to pay compensation for damages to the laborer caused by a breach of contract. However, the company in question - Binh Phuoc Trading, Import-Export and Tourist Company (Bitocimex) - was experiencing financial difficulties. Mr. Nguyen Van Thoa, Deputy Director of Binh Phuoc People's Committee stated that he instructed all relevant provincial agencies to find a way to deal with the dispute. He asked the company "to terminate the contract based on the law in the light of ensuring fully legitimate rights of the workers, bearing the risk by itself and not passing the risk over to the worker." Ultimately, DOLAB officials worked with the Binh Phuoc People's Committee to loan the company money to officially terminate worker contracts and ensure that the workers were satisfactorily compensated. This case was widely covered in the (state controlled) Vietnamese press.

16. (SBU) In an extension of the Bitocimex case, the Binh Phuoc People's Committee inspectors found that the amount of USD 678,350 collected in fees and deposits from 629 workers to Malaysia was completely spent by the Ho Chi Minh City Bitocimex branch. The company is suspected of swindling workers sent to both Malaysia and Taiwan. The Binh Phuoc police arrested and are investigating four other Bitocimex staff, Thoa confirmed.

New labor export law -----

17. (SBU) To strengthen further Decree 81, the GVN has officially proposed to include a Law on Labor Export in the National Assembly's law making program for 2005. This long-term proposal reflects Vietnam's determination to create a more organized formal legal framework for export labor. Currently, several provisions of the Labor Code and other legal documents, such as decrees and circulars, cover labor export regulations but there is no comprehensive coverage in law. If it is incorporated into the 2005 law-making program, such a law could be approved by the National Assembly as of early 2006. MOLISA is preparing all necessary information, documents and references, and is ready to draft the law.

Interagency cooperation -----

18. (SBU) According to MOLISA officials, while MOLISA defines the scope of activities and responsibilities for labor export, the Ministry actively cooperates with the MFA and the Ministry of Public Security (MPS) to support labor export regulation and enforcement. Through the MFA, MOLISA has maintained close relations with Vietnam's embassies abroad, which are charged with intervening on behalf of workers on consular and legal affairs. According to Mr. Vu Dinh Toan, Deputy Director General of DOLAB, recent MFA internal directives support these responsibilities in practice, requiring new Vietnamese ambassadors to meet with MOLISA to better understand the export labor system and worker protections. Because MOLISA is not a law-enforcing agency, the Ministry cooperates with MPS to identify criminal and administrative violations of the labor export system to "solve problems and eliminate violations of the labor export system that could lead to trafficking in persons". This includes working with local authorities in provinces to combat fraud and other abuses.

19. (SBU) The GVN is further strengthening inter-agency coordination and cooperation in a couple of key areas. MOLISA, the Ministry of Justice (MOJ), the Supreme People's Court and the Supreme People's Procuracy are currently drafting an inter-agency circular providing guidance on the settlement of disputes between labor export enterprises and

workers. MOJ is the lead drafting agency in collaboration with the other agencies' experts. In addition, MOLISA and MPS are waiting for approval of a draft inter-agency circular on preventive measures and punishments for labor export violation.

110. (SBU) In addition to cooperation across government ministries and agencies, both MOLISA Minister Nguyen Thi Hang and DOLAB have welcomed comments and feedback from the U.S. Embassy or other experts from the United States on how Vietnam's labor code can be better brought into conformity with international codes of practice, particularly in the area of export labor.

Targeted training

111. (SBU) Before departing Vietnam, workers receive training in a wide range of subjects geared toward their destination, including the language, culture, and basic legal system of both Vietnam and the destination country, DOLAB experts confirm. Labor export companies, provincial governments, and employment service centers run courses to train many laborers in the specific skills necessary for their overseas jobs because "very few are qualified for the work that they seek," said DOLAB DDG Vu Dinh Toan. The GVN recognizes the need for more and more relevant training, both on job specific skills, on customs, laws and regulations of receiving countries, and workers' rights and responsibilities under Vietnam and receiving country laws. MOLISA has recently announced plans to establish three major training centers - in the North, Center and South - to improve the quality of pre-departure training and orientation. They have proposed a budget of \$170 million from a variety of sources for training and development to train up to 70 percent of the Vietnamese migrant workforce before sending them abroad between now and 2010.

Weaknesses

112. (SBU) The GVN effort to address labor export problems has some weaknesses, according to interlocutors from the International Organization for Migration. The new labor attaches at SRV Embassies in labor export consuming countries are "stretched thin" and cannot meet all the demands for assistance in countries which themselves have limited capacity to protect worker rights, IOM Chief of Mission Andre Bruce told Poloff September 14. In addition, the GVN has not yet identified funding sources for all of its additional training programs, and typical human resource problems hamper labor export law enforcement efforts. Still, Bruce said, the GVN appeared "serious" about addressing the problems inherent in labor export as well as reaping its benefits.

Comment

113. (SBU) Vietnam's labor export regulation is evolving as the GVN responds to growing needs and demands. There is increasing definition of agency roles and responsibilities. A unified law has been proposed, but is still pending. The increase in the number of Vietnamese laborers sent overseas, with the potential for an accompanying increase in the number of cases of fraud and abuse of would-be workers, is a public relations and public policy concern which the GVN recognizes it must address. The result has been a significant increase in the attention and resources the GVN has devoted to the issue across a number of agencies both here and abroad, from GVN representatives in SRV Embassies in labor export receiving countries to MPS investigators working with local officials to prosecute corrupt executives at labor export companies.

114. (SBU) As Vietnam's dependence on export labor grows, both as a means to relieve labor market pressure at home and to generate foreign currency, an issue competing with that of protection of workers is Vietnam's interest in maintaining its position as an attractive supplier of export labor. This requires the GVN to work with key labor consuming countries such as the ROK, Malaysia, and Taiwan to address the problem of Vietnamese workers who do not fulfill their contracts and disappear into the local economy, violating the terms of their visas. The role of labor export companies in ensuring that workers respect their contracts, and the role of the GVN in enforcing those contracts, can at times create contradictions with the GVN's mandate to protect workers. In balancing the responsibility to protect workers from abusive situations with the responsibility to enforce contracts (and the sensitive issue of maintaining Vietnam's attractiveness as a source of export labor), Vietnam must take care not to be seen as compromising on ensuring workers' rights and protections. On the positive side, current GVN efforts to strengthen the labor export system, both through increased attention to and

oversight of labor export companies and activities, and cultivating cooperative relationships with receiving country governments, can help enforce contractual obligations while at the same time protecting the workers' rights to terminate contracts on legitimate grounds.

15. (SBU) There have been no cases of labor export-related trafficking reported by any source since the passage of the 2002 labor law and the implementation of Decree 81. There have, however, been numerous cases where labor export companies have been sanctioned and/or corrupt executives jailed for crimes or abuses defrauding laborers. The GVN has also stepped in on several occasions to support Vietnamese workers who have found themselves in difficult circumstances in foreign countries. This represents a significant shift from the situation that prevailed in 2000 during the events that led to the Kil Soo Lee case. The message the GVN has been sending is that a) it will not tolerate abuses of workers by labor export companies, and b) it will, through intervention with third country governments or through holding labor export companies to their obligations to workers, come to the assistance of workers in trouble abroad.

MARINE